

COMPARISON OF MIDWESTERN DISASTER TAX RELIEF BILL AND REP. KIND BILL

PROVISIONS CONTAINED IN THE MIDWESTERN DISASTER TAX RELIEF BILL THAT ARE NOT CONTAINED IN THE REP. KIND BILL

Qualified Disaster Recovery Assistance Distributions. The proposal waives the 10 percent penalty tax if a distribution from an individual retirement account (“IRA”) or tax-favored retirement plan (e.g., Code sections 401(k), 403(b), or 457(b) plans) is considered a qualified Disaster Recovery Assistance distribution (“qualified distribution”). A distribution is considered a qualified distribution if it is made on or after the presidentially-declared disaster date (“applicable declaration date”) and before January 1, 2010 and is made to an individual whose principal residence on the applicable declaration date is located in a Midwestern disaster area and who sustained an economic loss by reason of the disaster. Other principal features include the following: (i) the waiver is limited to amounts up to \$100,000; (ii) the mandatory withholding rules applicable to eligible rollover distributions would not apply; (iii) participants receiving a qualified distribution would be permitted to spread the income tax resulting from receipt of the distribution ratably over three years; and (iv) amounts distributed may be re-contributed to the plan over a three-year period following the distribution and such re-contributed amounts would not be includible in income in the tax year in which the distribution was made (e.g., if a participant received a qualified distribution in 2008 and subsequently re-contributed the distribution amount in 2009, the participant may file an amended return requesting a refund for the amount taxable in 2008).

Recontribution of Withdrawals for Home Purchases. The proposal allows distributions for home purchases that were made from a Code section 401(k) or 403(b) plan or IRA after the date which is 6 months before the applicable declaration date and before the day after the applicable declaration date and that were not finalized because of the tornadoes and floods giving rise to the designation of the area as a disaster area to be re-contributed to the plan or IRA tax-free (i.e., the recontributions would be treated as rollovers). Amounts must be re-contributed by [November 30, 2008] in order to receive favorable tax treatment.

Loans from Qualified Plans. The proposal effectively doubles the limitation on loans from a 401(k), 403(b), or a governmental 457(b) plan by allowing participants located in a Midwestern disaster area and who sustained economic loss by reason of the tornadoes and floods giving rise to the designation of the area as a disaster area to receive loans up to the lesser of \$100,000, or 100 percent of the vested accrued benefit for loans made after the date of enactment and before January 1, 2010. In addition, outstanding loan payments due on or after the applicable declaration date and before January 1, 2010 may be deferred an additional 12 months, with appropriate adjustments for interest.

Special Look-Back Rule for EIC and Refundable Child Credit. To deal with the situation where 2008 records are lost or destroyed in a disaster, this proposal allows low-income working families an election to use their 2007 income amount for purposes of

determining their eligibility for the refundable earned income credit and the refundable child tax credit.

Additional Personal Exemption for Housing Victims. Current law provides a personal exemption for taxpayers, their spouses, and dependents. The proposal allows taxpayers who house up to four dislocated persons from the Midwestern disaster for a minimum of sixty days in their principal residences an additional personal exemption of \$500 per dislocated person (maximum additional personal exemption increase of \$2,000). Family members (other than spouses and dependents) staying with the taxpayer may qualify, and the housing must be provided rent-free. This proposal would not affect any deductions or exemptions for the dislocated person on the dislocated person's tax return. The deduction can be claimed in 2008 and 2009, but cannot be claimed in both years with respect to the same person.

Exclusion for Certain Cancellations of Indebtedness. Under current law, gross income generally includes any amount realized from the discharge of indebtedness. The proposal ensures that individuals are not taxed on personal debt that is discharged in response to damage suffered from the Midwestern disaster. For example, if a house is damaged or destroyed and the mortgage lender discharges all or part of this mortgage debt, the amount discharged is not treated as income as a result of the proposal.

Extension of Replacement Period for Property Lost Due to Floods or Tornadoes in the Midwestern Disaster Zone. Present law allows taxpayers not to recognize gain with respect to homes that are damaged or destroyed as a result of a presidentially-declared disaster if the taxpayer replaces the property within a four-year period. Business property that is destroyed must be replaced within a two-year period to avoid gain recognition. The proposal extends the replacement period to five years for principal residences and business property that was damaged or destroyed within any presidentially-declared disaster area for the Midwestern disaster. The extended replacement period applies to principal residences and business property, and the replacement property must be located in the Midwestern disaster area.

Employee Retention Credit. This proposal provides a 40 percent tax credit for wages paid up to \$6,000 if paid after the applicable disaster date, and before January 1, 2009, by employers with 200 or fewer employees located in the Midwestern disaster area who continue to pay their employees while their business is inoperable.

Representations Regarding Income Eligibility. Allows operators of qualified residential rental projects to rely on the representations of prospective tenants displaced by the Midwestern disaster for purposes of determining whether the individuals satisfy the income limitations for qualified rental projects. Individual's tenancy must begin during the six-month period beginning on the date the individual was displaced by the Midwestern disaster.

Expansion of Hope Scholarship and Lifetime Learning Credit. Current law allows a Hope Scholarship Credit in the first two years of post-secondary education equal to 100%

of the first \$1,000 of qualified tuition and related expenses, and 50% of the next \$1,000 for a maximum credit of \$1,500. There is also a Lifetime Learning Credit available to students enrolled in one or more courses at the undergraduate or graduate level (whether or not pursuing a degree), equal to 20% of the first \$10,000 in qualified tuition and related expenses. The proposal doubles the Hope Credit dollar amounts so the maximum credit would be \$3,000, and doubles the Lifetime Learning Credit percentage from 20% to 40%, for a maximum Lifetime Learning Credit of \$4,000 for students attending undergraduate or graduate institutions in the Midwestern disaster area. Room, board, books and fees would also be considered qualified expenses. This proposal applies to tax years 2008 and 2009.

Secretarial Authority to Adjust Taxpayer and Dependency Status for Taxpayers.

The Midwestern disaster has displaced thousands of individuals. Under present law, a prolonged change in a family's living situation could affect its eligibility for various tax benefits. The proposal gives the Treasury Department the authority to ensure taxpayers do not lose deductions, credits or filing status because of dislocations from the Midwestern disaster.

Tax-exempt Bonds. Provides Iowa, Arkansas, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri and Wisconsin the authority to issue a special class of qualified private activity bonds, called Midwestern disaster area bonds, outside of the state volume caps. The maximum aggregate bond authority with respect to any state cannot exceed \$1,000 times the portion of the state population which is located in a Midwestern disaster area. Midwestern disaster area bonds can be issued by States and municipalities. Bond proceeds can be used to pay for acquisition, construction, and renovation of nonresidential real property, qualified low income residential rental housing, and public utility property (e.g., gas, water, electric and telecommunication lines) located in the Midwestern disaster area. The current low-income housing targeting rules are relaxed so that more bond proceeds can be used to rebuild housing in the Midwestern disaster area. Interest payments on the bonds are not subject to the AMT. The authority to issue Midwestern disaster area bonds expires after December 31, 2010. In the case of project involving a private business use, either the person using the property suffered a loss in a trade or business attributable to severe storms, tornadoes or flooding or is a person designated by the Governor of the State as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered such loss. In the case of a project relating to public utility property, the project must involve the repair or reconstruction of public utility property damaged by severe storms, tornadoes or flooding.

Low Income Housing. Under current law, States receive allocations of low-income housing tax credits based on population. The proposal allows States to allocate volumes of additional housing credit amounts in years 2009, 2010, 2011 of \$18 per person in the Midwestern disaster area measured by population data issued before the earliest applicable disaster date for Midwestern disaster areas within the applicable state.

Additional Depreciation. Permits businesses that suffered damage as a result of the Midwestern disasters to claim an additional first-year depreciation deduction equal to 50 percent of the cost of new real and personal property investments made in the Midwestern disaster area. The additional deduction applies to purchased computer software, leasehold improvements, certain commercial and residential real estate expenditures and equipment. All depreciation deductions (including bonus depreciation) would be exempt from the AMT. The proposal applies to property placed in service through December 31, 2011 (December 31, 2012 for real property). In addition, the Department of Treasury would be granted authority, on a case-by-case basis, to extend the bonus depreciation deadline for placing long-lived property in service in certain circumstances for the Midwestern disaster area for up to one year.

Expensing Property. Current law permits certain small businesses to deduct up to \$250,000 of the cost of property used in the business. The proposal would increase this amount to \$350,000 for qualifying expenditures made in the disaster area through December 31, 2011 (December 31, 2012 for nonresidential real property and residential rental property). This proposal would also increase the level of investment at which benefits phase out from \$350,000 to \$1.4 million of qualifying purchases, thus allowing more businesses to use this tax benefit in rebuilding. This proposal applies to businesses that suffered property damage in the Midwestern disaster area and that placed property in service in the Midwestern disaster area after the date of the applicable disaster.

Increase in Rehabilitation Credit. For buildings that were damaged or destroyed in an applicable disaster, the rehabilitation credit is raised from 10 percent to 13 percent of qualified expenditures for any qualified rehabilitated building other than a certified historic structure, and the rehabilitation credit is raised from 20 percent to 26 percent of qualified expenditures for any certified historic structure.

Tax Credit Bonds. Authorizes Midwestern disaster States to issue debt service tax credit bonds providing credits against Federal income tax instead of interest payments, so that these States can provide assistance to communities unable to meet their debt service requirements as a result of the flooding, tornadoes, and severe storms. The maturity of the bonds cannot exceed 2 years. At least 95 percent of bond proceeds must be used to redeem or to pay principal, interest or premiums on an outstanding bond, and such proceeds so used must be matched by an equal amount of State funds. The maximum amount of tax credit bonds shall not exceed \$100 million for any state with an aggregate population located in the Midwestern disaster areas within such state of at least 2 million; \$50 million for states with such populations of at least 1 million but less than 2 million; and zero for any other state.

Temporary Suspension of Limitations on Charitable Contributions. The amount allowed as a charitable deduction in any taxable year may not exceed ten percent of the corporation's taxable income or fifty percent of an individual's adjusted gross income. The proposal temporarily waives these limits regarding charitable cash contributions dedicated to Midwestern disaster relief efforts. The proposal is effective for

contributions paid during the period beginning on the earliest applicable disaster date for all States and ending on December 31, 2008.

Increase in Standard Mileage Rate for Charitable Use of Vehicles. The mileage rate individuals may use to compute a tax deduction for personal vehicle expenses associated with charitable work is statutory and has not been increased since 1997 and is currently at 14 cents per mile. For a taxpayer assisting in relief efforts related to the Midwestern disaster, the proposal sets the charitable mileage rate at approximately 35 cents per mile, which is seventy percent of the standard business mileage rate, beginning on the applicable disaster date and ending on December 31, 2009.

Exclusion from Income of Mileage Reimbursements for Charitable Volunteers. In general, reimbursements received for operating expenses of a personal vehicle used in connection with charitable work in excess of the statutory charitable mileage rate are taxable income to the recipient. However, reimbursements for charitable mileage attributable to the Midwestern disaster up to the amount of the standard business mileage rate will not be considered taxable income through December 31, 2009.

Enhanced Deduction for Donations of Food and Book Inventory. The proposal extends an enhanced deduction for donations of food inventory to all businesses through December 31, 2009. Under present law, a taxpayer's deduction for charitable contributions of inventory generally is limited to the taxpayer's basis (typically cost) in the inventory. However, for contributions of food inventory, C corporations may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciated value (i.e., basis plus one half of fair market value in excess of basis) or (2) two times basis. The proposal extends the enhanced deduction for donations of food inventory to non-C corporation businesses. The proposal establishes an enhanced deduction for donations of book inventory through December 31, 2009. Under present law, taxpayers may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciated value (i.e., basis plus one half of fair market value in excess of basis) or (2) two times basis for donations of book inventory. The proposal extends the enhanced charitable deduction to donations of educational books to public schools.

PROVISION INCLUDED IN THE MIDWESTERN DISASTER TAX RELIEF BILL THAT HAS BEEN ADVERSELY MODIFIED IN THE REP. KIND BILL

Suspension of Casualty Loss Limitations. Under present law, non-business casualty losses are deductible by taxpayers who itemize only to the extent they exceed ten percent of adjusted gross income and a one-hundred dollar floor. In some circumstances, taxpayers are permitted to include a current-year casualty loss on an amended prior year return. The proposal eliminates the ten percent and one-hundred dollar floor for casualty losses resulting from the Midwestern disaster and incurred in the disaster area, including those claimed on amended returns.

A variation of the above provision is included in Rep. Kind's bill; however, Rep. Kind's bill actually raises the current-law \$100 floor up to \$500. Therefore, for those individuals

with casualty losses of up to \$500, the Kind proposal provides no benefit whatsoever when compared with current law. In contrast, the Midwestern disaster tax relief bill provides a tax deduction from the first dollar of casualty losses suffered by individuals.